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South Carolina House of Representatives

# Legislative Update

**Robert J. Sheheen, Speaker of the House**

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Vol. 8

March 26, 1991

No. 11

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## Legislative Update, March 26, 1991

### House Week in Review

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The House of Representatives finished work on the \$3.7 billion 1991-92 State Appropriation bill last week and sent it to the Senate for consideration. The House made a few technical amendments to the bill before giving it third reading last Tuesday.

Also sent to the Senate was S.654, requiring English fluency among higher education instructors. But before it was sent back to the Senate, the House made some changes in the bill.

Two important bills were added to the House's second reading calendar last week. They are H.3096, the Solid Waste Policy and Management bill, which was reported out of the House Agriculture, Natural Resources and Environmental Affairs Committee. (A summary of this significant legislation is in this week's Legislative Update.) Placed on the calendar without reference was H.3651, the \$275 million Bond Bill. Debate was adjourned on this Ways and Means Committee bill until today.

Two significant Labor, Commerce and Industry Committee bills were ratified last week. They are H.3421, the Real Estate Appraisers legislation, and H.3508, the NAIC Accreditation legislation.

The General Assembly met in joint session last Wednesday and elected a former House member, Warren Arthur IV of Hartsville, to the state Public Service Commission to fill an unexpired term.

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### Bills Introduced

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The following bills were introduced in the House of Representatives last week. Not all the bills introduced in the House are featured here. The summaries are arranged according to the standing committee to which the legislation was referred.

#### Education and Public Works

South Carolina State Change (H.3704, Rep. Felder). This legislation seeks to change the name of South Carolina State College to South Carolina State University beginning July 1.

College of Charleston to University of Charleston (H.3716, Rep. Whipper). Under this legislation, the College of Charleston would become the University of Charleston.

Daily Pledge (S.70, Sen. Rose). This legislation would require all public school students, from kindergarten through senior high, to say the Pledge of Allegiance sometime during the course of each school day. Those students who do not wish to participate in the pledge would be exempted and could not be penalized for not saying it. Any student who does not wish to participate could leave the classroom during the pledge, remain in his seat, or express his non-participation in any way that does not infringe on the rights of other students or disrupt the school activities.

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### Judiciary

Victims and Witnesses' Addresses and Telephone Numbers (S.512, Sen. Land). Currently, victims and witnesses who wish to be kept abreast of a criminal case may leave their addresses and telephone numbers with the solicitor, Department of Corrections and the Department of Probation, Parole and Pardon Services. This bill would make those addresses and telephone numbers confidential, to be released only under court order. However, the information could be disclosed to an attorney without a court order if it relates to the representation of his client.

### Labor, Commerce and Industry

Lowcountry and Resort Islands Tourism Commission (H.3703, Rep. Gregory). This legislation would create the Lowcountry and Resort Islands Tourism Commission to promote the economic development of the region through tourism promotion. The area would include Beaufort, Colleton, Hampton and Jasper counties. The commission would be composed of three members from each of these counties, appointed by the governor on the recommendation of the county legislative delegation. The terms would be for four years. One member from each county must represent the hospitality business to provide direct input from the travel and leisure industry. Two members from each county must represent the chambers of commerce.

The commission would be directed to take the necessary action to make the Lowcountry and resort islands a major center of tourism; coordinate the interest and expertise of groups in each county; encourage promotion of the region by PRT, the U.S. Travel Service, etc.; establish guidelines to ensure the protection of individual's rights and the protection of environmental and cultural interests; and seek out and apply for funding through available agencies and programs.

Reinsurance Facility and Hurricane Hugo Losses (S.704, Senate Banking and Insurance Committee). Under this legislation, the State Reinsurance Facility could recoup its operation losses for a 12 month period due to Hurricane Hugo if this action is recommended by the Reinsurance Facility governing board and approved by the chief insurance commissioner. The recoupment would be for a 36-month period following the approval.

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### **Medical, Military, Public and Municipal Affairs**

Doctor Certification for Handicapped Parking ((H.3708, Rep. Altman). This legislation would waive the requirement for a doctor's certification for a handicapped license tag if the applicant for the handicapped tag is an organization or agency.

Blood Test for Marriage License (H.3710, Rep. Smith). Under this legislation, couples wanting to get married in South Carolina would have to have blood tests to determine the presence or absence of venereal disease and the HIV virus, which causes AIDS. The test must be made within 30 days of the license application and the results of the blood test would be turned into the county probate judge. If the test is positive for syphilis, the applicant may receive the marriage license if the infected person has been treated and both applicants are aware of the results. The infected party also must sign a statement agreeing to continue treatment for syphilis before the license could be issued. In the case of HIV, both parties must be made aware of the positive results and counseling made available.

This bill also would require that applicants be offered a blood test for sickle cell anemia, which is an inherited disease in blacks. The cost of this test and counseling would have to be borne by the applicant unless adequate state funds are available. Women applicants of child bearing age also must be tested for rubella immunity and counseled regarding birth defects and immunization methods if the woman is found not to be immune. Issuing a marriage license without the proposed blood test would, or filing a false blood test, would be a misdemeanor.

Task Force on the Homeless (S.752, Sen. Lourie). This joint resolution would add the executive director of the state Employment Security Commission and commissioner of the state Vocational Rehabilitation agency to the 10-member task force to study homelessness. The bill also would give the task force a little more time to report back to the General Assembly -- June 1 for the interim report and June 2, 1992 for the final report.

### **Ways and Means**

Child Care Tax Credit Expanded (H.3699, Rep. Jimmy Bailey). This legislation would extend the state tax credit allowed for the capital costs of establishing an employee child care center to those individuals who wish to establish a child care program on city, county or state-owned recreational property.

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### Without Reference

Bond Bill (H.3651, House Ways and Means Committee). Here are the total capital improvement bonds proposed in the Bond Bill:

1.	SLED	\$ 828,700
2.	Adjutant General	4,350,420
3.	Budget and Control Board	2,125,000 **
4.	The Citadel	6,906,040
5.	Clemson	13,965,000
6.	College of Charleston	5,978,000
7.	Francis Marion College	8,100,000
8.	Lander College	12,078,739
9.	S.C. State College	4,195,861
10.	USC (all branches)	40,329,992
11.	Winthrop College	14,372,000
12.	MUSC	11,366,040
13.	State TEC Board (all campuses)	10,747,921
14.	Wil Lou Gray Op School	225,000
15.	School for the Deaf & Blind	1,464,405
16.	State Library	250,000
17.	Dept. Of Mental Health	*
18.	John de la Howe School	1,318,014
19.	Dept. of Corrections	108,057,866
20.	Dept. of Youth Services	12,218,752
21.	Clemson PSA	4,406,000
22.	Wildlife & Marine Resources	1,325,000
23.	Coastal Council	2,500,000
24.	Parks, Recreation & Tourism	2,800,000
25.	Old Exchange Commission	75,000
26.	Aeronautics Commission	1,016,250
27.	Richland Memorial Hospital	4,000,000

Total All Agencies \$275,000,000

\* \$5,880,000 in capital improvement bonds for the Department of Mental Health for the Charleston Area Mental Health Center would be authorized by Act 1276 of 1970, which states all capital improvement bonds for the department are to be paid with revenues derived from paying patients at all institutions or facilities under the jurisdiction of the DMH commission.

\*\* \$11,900,000 for the S.C. Fire Academy replacement and State Fire Marshall's Office in departmental bonds, to be paid from an additional .35 percent tax on the gross premium receipts less premiums returned on canceled insurance policy contracts

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and less dividends and returns of unabsorbed premium deposits of all fire insurance companies doing business in the state. A one percent tax is already in effect.

The bill limits the general obligation bonds projects in the legislation to the \$275 million total. In addition, the legislation states that bonds could not be issued for projects unless the project is located on state-owned or state-leased property and that the lease should be, at the minimum, for the life of the project. The Adjutant General's Office, Richland Memorial and the Aeronautics Commission would be exempted from these limitations.

The state bonded indebtedness limit would be set at \$1.7 billion by this bill, and would not include the Mental Health department or Fire Academy bonds.

### **Corrections**

The following changes were issued by the Clerk of the House regarding the committee assignments of the following bills:

H.3681, the Government Consolidation bill sponsored by Rep. Waites, has been referred to the House Judiciary Committee.

H.3682, CPR and Child Care Facilities sponsored by Rep. Waites, has been referred to the House Medical, Military, Public and Municipal Affairs Committee.

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### **Summary: Solid Waste Policy and Management Act of 1991**

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The following is a section-by-section summary of H.3096, the Solid Waste Policy and Management bill placed on the House calendar last week. Thanks to the staffs of the House Agriculture, Natural Resources and Environmental Affairs Committee and House Ways and Means Committee for writing this summary.

#### **H.3096** **AS PASSED BY THE AGRICULTURE, NATURAL RESOURCES** **AND ENVIRONMENTAL AFFAIRS COMMITTEE**

#### **SECTION-BY-SECTION ANALYSIS**

##### **SECTIONS 1 and 2. Findings; purposes.**

The findings emphasize that South Carolina has a growing solid waste problem which is the inevitable result of a healthy economy and an increasing population, that landfill space is decreasing and becoming more and more expensive, that South Carolina should have a goal of maximum resource recovery and recycling and reuse of solid waste, and that a coordinated statewide solid waste management plan, implemented through local government plans, is necessary to address solid waste issues. The purposes of the article emphasize the need for environmentally safe and economically feasible solid waste management, for a cooperative statewide program to assist local governments; for adequate local government planning for the promotion of waste reduction, recycling, reuse, and processing; for public education on solid waste issues; for a leadership role for the State in solid waste reduction and recycling; and for a regional approach to solid waste management.



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**SECTION 3.** This section adds a new chapter to Title 44, dealing with solid waste policy and management which contains the following sections:

### **Section 44-96-10. Short Title.**

This section states the title of the legislation which is the "South Carolina Solid Waste Policy and Management Act of 1991."

### **Section 44-96-20. Applicability.**

This section clarifies that this legislation does not apply to hazardous waste, infectious waste, radioactive waste, and mining waste.

### **Section 44-96-30. Definitions.**

This section defines the operative terms used in Article 1 of the legislation.

### **Section 44-96-40. State solid waste management policy and goals.**

This section establishes the policies and goals of this State with regard to solid waste management. It sets state policies of encouraging research into innovative methods of solid waste management which may include, the involvement of private enterprise in solid waste management. It establishes a statewide solid waste reduction goal of 30% of the solid waste being disposed of in municipal solid waste landfills not later than 6 years after date of enactment. Not more than one-half of the waste reduction goal may be achieved by removal from the solid waste stream of yard trash, white goods, waste tires, land-clearing debris and similar waste streams. It also establishes a statewide goal of recycling 25% of solid waste generated not later than 6 years after enactment. This section also sets the policy that local governments should make every effort to achieve the statewide recycling and reduction goals and sets forth a method for determining whether a county has met the 30% reduction goal. In a county or municipality where a recycling or reduction program is in place prior to 1993, the base figure for determining a 30% reduction goal will be calculated by adding the weight of solid waste recycled or removed from the waste stream during the preceding year in that county or municipality to the amount of solid waste currently being disposed of by that county or municipality in municipal solid waste landfills together with the weight of solid waste reduced due to incineration. No more than 50% of the reduction goal may be met due to incineration. Only existing incinerators may use this provision for calculating the reduction goal. Furthermore, this section provides that each county or region, and other local governments located therein, which meet the reduction goals be financially rewarded by the State.

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**Section 44-96-50.** State solid waste plan; revision of plan and annual report.

This section establishes the requirement that DHEC submit to the Governor and to the General Assembly, not later than 18 months after date of enactment, a comprehensive state solid waste management plan. The elements of the plan are set forth in this legislation. This section also requires DHEC to submit annual reports to the Governor and to the General Assembly basically describing the progress made in implementing the state and local government solid waste management plans. There is also established a state Solid Waste Advisory Council to advise DHEC on the preparation of the state solid waste management plan and on the preparation of the annual reports by DHEC on solid waste management in this state. The council consists of 16 members including representatives recommended by the S.C. County Association and Municipal Association and representatives of various industries.

**Section 44-96-60.** Establishment of the Recycling Market Development Council; initial report; annual report.

This section creates the 14-member Recycling Market Development Council within the State Development Board, which is directed to assist in identifying and developing markets for source separated, recovered and/or recycled materials or products. The members are appointed by the Governor. The council is composed of representatives of various government entities, representatives of businesses and industries participating in or interested in recycling, and one member of the general public. The chairman is to be appointed by the State Development Board and the vice-chairman is to be selected by the council. The council is required to submit a comprehensive recycling report to the Governor and to the General Assembly not later than 15 months after enactment. The topics required to be covered in the report are set forth in the legislation. Following its initial report, the council is required to submit annual reports to the Governor and to the General

Assembly on progress in the recycling area and recommendations for improvement. The State Development Board is directed to provide staff support for the council. Council members serve 2-year terms.

**Section 44-96-70.** County or regional solid waste management plans; local government responsibilities.

This section establishes the requirement for counties, regions (groups of counties), in cooperation with the municipalities to submit local solid waste management plans to DHEC not later than 15 months after DHEC submits the state plan to the Governor and to the General Assembly. The elements of the local plans are set forth in the legislation, one of which is the requirement that the plan provide for a source separation and recycling

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program. The legislation provides for DHEC to have 180 days in which to review and provide comments on the plans. At the end of the 180-day review period, local governments must begin implementation of their plans and must fully implement the plans not later than 1 year after the end of the 180 day review period. This section further provides that the plans must be designed to achieve the statewide goal on solid waste reduction. Local governments may establish higher goals if they wish. Also, DHEC may modify a statewide goal for a particular local government entity for good cause shown, as long as the modification does not result in a failure to meet statewide reduction and recycling goals. After submission of its plans, each local government must submit an annual report to DHEC basically describing the progress made in implementing the plan.

The legislation strongly encourages counties to pursue and submit regional plans, but they are not required to do so. Counties must notify DHEC in writing whether they are going to submit a single county plan or participate in a regional plan not later than 18 months after the enactment. In addition, counties are authorized to enter into cooperative agreements with other counties and municipalities. The governing body of a county has the responsibility for the operation of solid waste management facilities to meet the needs of the county, including incorporated and unincorporated areas. However, municipalities are not prohibited from continuing to operate existing solid waste management facilities or from otherwise providing for solid waste services within that municipality. However, a county is not held responsible for the operations, closure or post closure of any solid waste management facility owned and operated by a private entity.

A fee of \$10/ton of out-of-state waste is imposed, unless that state has a higher fee. In that case, the higher fee would be imposed. All out-of-state fees would be deposited in the Solid Waste Management Trust Fund. Finally, this section requires operators of solid waste management facilities to install scales to weigh the solid waste received or to demonstrate financial hardship for not doing so not later than 18 months after the enactment. This section also establishes a local Solid Waste Advisory Council for each county or region to advise on the preparation and implementation of a solid waste management plan. This section sets forth

the membership of this council and requires that a council be in existence until at least the end of DHEC's 180 day review period.

### **Section 44-96-80. Full cost disclosure.**

This section requires DHEC to promulgate, not later than 1 year after date of enactment, regulations for counties and municipalities to use in calculating the full cost of the solid waste management services that they provide. One year after promulgation of the regulations, local governments must provide such cost information to their residents and

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continue to do so annually through publication in newspapers of general circulation. The basic elements of what should be included in such cost estimates are set forth in the legislation.

### **Section 44-96-90. Additional powers and duties of the department.**

This section sets forth basic powers and duties of DHEC in addition to those provided for in other portions of the bill. DHEC is, for example, authorized to promulgate regulations and establish programs to implement the state solid waste management plan and to implement other provisions of Article 1. DHEC is also authorized, among other things, to provide assistance to local governments and to state agencies in carrying out their responsibilities under this article, to encourage counties to pursue a regional approach to solid waste management, and to conduct public education programs.

### **Section 44-96-100. Regulations must be in consultation.**

This section states that all regulations promulgated must be in consultation with officials representing local governments which own or operate municipal solid waste disposal facilities.

### **Section 44-96-110. Establishment of the Office of Solid Waste Reduction and Recycling.**

This section establishes within DHEC the Office of Solid Waste Reduction and Recycling within 90 days after the enactment. This section also establishes the duties and responsibilities of the office, which include receiving and disbursing funds from the Solid Waste Management Trust Fund, managing the Solid Waste Management Grant Program, promoting waste reduction and recycling by government and private entities, and educating the public and solid waste management professionals on these issues. Not later than 6 months after enactment, this section requires the Office of Solid Waste Reduction and Recycling to develop guidelines for the establishment and implementation of recycling projects in schools. Technical and financial assistance is to be provided to interested school districts.

### **Section 44-96-120. Establishment of the Solid Waste Management Trust Fund.**

This section establishes the Solid Waste Management Trust Fund, which is to be composed of appropriated funds, federal government, public and private contributions and grants, .44 cents of the \$2.00 per new tire sold fee, the \$2.00 per lead acid battery fee, the \$2.00 per white good fee and

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funds raised by the fees imposed on motor oil interest earnings accrued on the trust fund and 5 million dollars of oil overcharge monies not already obligated. The trust funds may be used for the purposes set forth in this section but will be primarily used to fund DHEC operations in implementing this chapter and to assist local governments to carry out their responsibilities under this legislation. DHEC is directed to make quarterly reports to the Joint Legislative Committee on Energy, State Solid Waste Advisory Council, Ways and Means Committee and Senate Finance Committee on the condition of the Trust Fund and on the funds disbursed therefrom.

### **Section 44-96-130. Solid Waste Management Grant Program.**

This section requires the Office of Solid Waste Reduction and Recycling to establish a grant program, utilizing the funds from the Solid Waste Management Trust Fund, to assist local governments in carrying out their responsibilities under this chapter. Grant disbursements must be approved by the State Solid Waste Advisory Council. Not later than 12 months after enactment, the Office of Solid Waste Reduction and Recycling is to promulgate regulations regarding the criteria necessary under the Solid Waste Management Grant Program. Grants must be made available as soon as possible after promulgation of the regulations. After the date on which local governments are required to have submitted plans to DHEC, no local government may qualify for a grant unless it has submitted a plan meeting statutory requirements. For the first 5 years, all grant funds made available to local governments must be used to carry out their responsibilities under Article 1. After 5 years, at least 25% of the grant funds given to local governments must be bonus grants to reward local governments who have met or exceeded their waste reduction or recycling goals. These bonus grants must be used for activities related to solid waste management.

### **Section 44-96-140. Recycling programs of state governments; state procurement policy; report of the Department of Highways and Public Transportation.**

This section requires the General Assembly, the Governor's Office, the Judiciary, all state agencies, and all state-supported institutions of higher education to establish source separation and recycling programs not later than 12 months after the date on which DHEC submits the state solid waste management plan to the Governor and to the General Assembly. This section further requires the Division of General Services to submit a report to the Governor and to the General Assembly, not later than 6 months after date of enactment, reviewing the state procurement process to determine what percentage of state purchases contain recycled materials and to identify procurement regulations which might discriminate against products and materials with recycled content or items which are recyclable. One year after date of enactment, the Division of General

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Services must amend the procurement regulations to eliminate any discriminatory provisions. One year after the effective date of the amended procurement regulations, all state government entities must procure items with recycled content whenever feasible. Finally, not later than 6 months after the date of enactment and annually thereafter, the Department of Highways and Public Transportation is directed to submit a report to the Governor and to the General Assembly on the use of certain recycled products or materials in activities of the Highway Department.

### Section 44-96-150. Packaging; plastics.

This section establishes the following prohibitions on certain packaging and plastics:

- 6 months after date of enactment, no beverage containers with detachable metal rings or tabs may be sold in this State;
- on or after Jan. 1, 1994, no products packed in a container or packing material manufactured with CFC's may be sold;
- one year after date of enactment, no plastic bags may be used for consumer purchases unless they are recyclable;
- one year after enactment, no plastic ring carriers may be sold unless recyclable;
- one year after date of enactment, no polystyrene foam products may be sold for use in conjunction with food for human consumption unless such products are recyclable;

This section also requires, not later than 18 months after enactment, that all plastic bottles and all rigid plastic containers must be labeled by an identifying code to indicate the resin type used to make the structure of containers. Not later than 5 years after enactment, DHEC is to determine the number of beverage containers being sold annually in this state and the percentage being recycled. If less than 25% of either glass, aluminum or plastic containers is being recycled, DHEC is to submit a report to the Governor and the General Assembly. Seven years after enactment, another determination is to be made by DHEC and if the percentage recycled is less than 35% of any category, a report is to be submitted to the Governor and the General Assembly making recommendations to increase the recycling rate.

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### **Section 44-96-160. Used Oil.**

This section places certain prohibitions on the disposal of used oil and establishes certain regulatory requirements for the management of used oil. 12 months after enactment, no person may dispose of used oil except by delivery to a used oil collection facility, to a used oil recycling facility, a used oil energy recovery facility, or an authorized agent for delivery to

one of these facilities. DHEC is directed to encourage the voluntary establishment of used oil collection centers and recycling programs. The Department of Highways and Public Transportation is to establish or contract for at least 1 used oil collection center in every county, unless it can certify that a private used oil collection center is operating in the county. Persons who maintain used oil collection centers which receive over a certain amount of used oil annually must register with DHEC. Used oil collectors must also provide annual reports to DHEC.

This section also places limits on responsibility for environmental response costs, under certain conditions described in the bill, in order to encourage businesses to serve as used oil collection centers. All containers of motor and other types of oil offered for retail sale in this State must be marked to indicate that they contain a recyclable product, and retailers must post written notices regarding proper disposal of used oil. Inspections and fines are authorized to enforce these provisions.

This section requires certain transporters, collectors, and recyclers of used oil to register annually with DHEC, and those who are required to register must submit annual reports to DHEC. This section also requires that any person who transfers over 500 gallons of used oil weekly must be a certified transporter, and DHEC is directed to establish a certification program for transporters. This section requires the owner or operator of a used oil recycling facility to obtain a permit from DHEC. DHEC has 18 months to develop that permitting system. There are certain limited exceptions to the permit requirement. Ninety days after enactment, a fee of 8 cents per gallon is to be imposed on motor oil invoiced to S.C. distributors. A fee is not to be imposed on subsequent persons who receive motor oil from a distributor who has paid the fee. This fee is to be remitted to the S.C. Tax Commission, which will submit these funds to the Solid Waste Management Trust Fund's Petroleum Fund. This section also sets forth the manner in which the Petroleum Fund is to be utilized. When the balance of the Petroleum Fund exceeds 3 million dollars, the fee will be adjusted by the Tax Commission to produce the amount of revenue required in the fund. This section also requires all state agencies to procure used oil materials and products where practicable.

### **Section 44-96-170. Waste Tires.**

This section establishes certain prohibitions on the disposal of waste tires and establishes regulatory requirements for managing this waste

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stream. This section requires owners or operators of existing tire dumps to notify DHEC within 90 days of enactment of the existence of the dump and provide certain information on its size. DHEC is directed to submit to the Governor and to the General Assembly, not later than 6 months after date of enactment, a comprehensive report on waste tires in this State and how they should be managed. Also, 6 months after date of enactment, no one may knowingly dispose of whole waste tires in a landfill. 18 months after date of enactment, other prohibitions take effect, such as prohibiting disposal of waste tires unless they are taken to permitted solid waste disposal facilities, a waste tire site which is part of a permitted processing facility, a permitted waste tire collection center, or a permitted processing facility.

This section also requires that collectors, processors, and haulers of waste tires obtain a permit from DHEC and requires DHEC to promulgate regulations establishing the permitting requirements not later than 12 months after date of enactment. Exemptions to this permitting requirement are set forth in the legislation. This section also provides for the imposition of a \$2.00 fee per new tire sold. The General Assembly is to review this fee every 5 years. The wholesaler or retailer is to remit these fees, minus a 3% administrative fee to the S.C. Tax Commission. The State Treasurer is to remit \$1.50 of this fee to the counties based on county population for management of waste tires. The remaining funds are to be remitted to the Solid Waste Management Trust Fund to be placed in the Waste Tire Grant Trust Fund. Any county failing to comply with this section or its regulations are not eligible for waste tire grant trust fund monies. DHEC is also authorized to establish programs to encourage the public to return their waste tires to a collection center, and further guidance is given on awarding grants for waste tire management activities. State and county solid waste management plans must include a section on waste tires. This section should include an estimate of the number of waste tires annually generated within that county or region and a projection of the amount generated in 20 year period following enactment; an estimate of the cost of implementing a disposal plan; the number and location of waste tire sites; and current future options. Each county must participate in waste tire clean-up enforcement efforts and no later than 12 months after enactment, DHEC must establish approved waste tire sites and designate and begin disposal operations. Counties may not impose an additional disposal fee on waste tires generated within the county, but may impose fees on waste tires generated outside of South Carolina.

### **Section 44-96-180. Lead-acid batteries.**

This section establishes certain prohibitions on the disposal of lead-acid batteries and imposes certain requirements on the management of this waste stream. This section provides that, 12 months after enactment, no person may knowingly dispose of a lead-acid battery except by returning it to a



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battery retailer or wholesaler, a collection or recycling facility, or a secondary lead smelter permitted by EPA. This section also provides liability protection to operators of lead-acid battery collection centers, unless such persons are grossly negligent. Retailers have similar restrictions on how they may dispose of lead-acid batteries. A retailer of such batteries must accept used batteries from its customers, and battery wholesalers must accept used batteries from retailers. Fines will be imposed for violations. Retailers are also required to post written notices at their places of business informing customers of the proper methods of disposal of used batteries and that batteries are recyclable. After Nov. 1, 1991, a \$2.00 per lead acid battery fee sold is to be imposed. The wholesaler or retailer is to remit this fee to the S.C. Tax Commission, minus a 3% administrative fee. The funds are to be remitted to the Solid Waste Management Trust Fund. There is also a \$5 refundable deposit charged by the lead-acid battery retailer that the consumer may get back if a core is returned to the original retailer within 30 days from the time of the sale. Not later than 18 months after this chapter is effective, DHEC must promulgate regulations carrying out this section and to impose reasonable fees to defray the cost of its regulatory activities. This section also requires all state agencies to procure recycled lead acid batteries whenever practicable.

### **Section 44-96-190. Yard trash; compost.**

This section establishes certain prohibitions on landfilling of yard trash and land-clearing debris and establishes regulatory requirements governing the management of these waste streams. DHEC has 12 months after date of enactment to promulgate regulations on proper disposal of yard trash and land-clearing debris and on standards for the production of compost. 15 months after enactment, no one knowingly may send yard trash and land-clearing debris to municipal solid waste landfills, and no landfill knowingly may accept these waste streams unless it has a composting facility at the landfill, and no one knowingly may mix municipal solid waste with yard trash intended for collection and disposal at a composting facility except for bags or other containers approved by the operator of the composting facility. Violators are subject to fines. This section also requires state agencies to procure composted materials and products when practicable.

### **Section 44-96-200. White goods.**

This section establishes prohibitions on landfill disposal of white goods and imposes certain regulatory requirements on management of this waste stream. DHEC has 18 months after date of enactment to promulgate regulations regarding the proper methods of disposing or managing white goods. Retailers of white goods must then post written notices regarding proper disposal of used white goods. Three years after date of enactment, no person knowingly may mix white goods with municipal solid waste, and no

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municipal solid waste landfill knowingly may accept it. After Nov. 1, 1991, a \$2.00 fee per each white good sold is to be imposed. The wholesaler or retailer is to remit the fees to the S.C. Tax Commission, minus a 3% administrative fee. The funds are to be remitted to the Solid Waste Management Trust Fund.

### **Section 44-96-210. Newsprint.**

This section authorizes DHEC to make a determination, five years after enactment, whether newsprint is being recycled at a rate of less than thirty-five percent. DHEC is charged with making a report to the Governor and General Assembly recommending incentives and/or penalties, if newsprint is being recycled at a rate of less than thirty-five percent.

Section 44-96-220. Applies provisions of Chapter 54 of Title 12 to the fees imposed by this Act.

### **Section 44-96-230. State recycling symbol.**

This section provides for the establishment of a trademarked state recycling symbol.

### **Section 44-96-240. Severability.**

This section provides that if any portion of the bill is found invalid, the remainder of the legislation should not be affected.

## **SECTION-BY-SECTION ANALYSIS OF ARTICLE 2**

### **Section 44-96-250. Definitions.**

This section defines the operative terms that are used in Article 2 of the legislation. It also clarifies that the definitions used in Article 1 are applicable in Article 2 as well.

### **Section 44-96-260. Powers and duties of the department.**

This section sets forth the basic powers and duties of DHEC in addition to those authorized in other portions of Article 2. DHEC is authorized, among other things, to promulgate regulations, procedures, or standards necessary to protect human health and safety and the environment from the adverse effects of improper solid waste management; to issue, deny,

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revoke, and modify permits, registrations, or orders for solid waste management facilities; to establish and collect reasonable permit and registration fees; to conduct inspections and investigations of any solid waste management facility; and to establish training programs for operators of solid waste management facilities.

**Section 44-96-270. Department report on regional solid waste management facilities.**

This section directs DHEC, not later than 18 months after date of enactment of this legislation, to submit a report to the Governor and to the General Assembly on ways to encourage counties and municipalities to pursue a regional approach to solid waste management.

**Section 44-96-280. Powers of the Commissioner.**

This section authorizes the commissioner of DHEC to take action to protect human health and safety or the environment from an imminent and substantial hazard. Such action may include, but is not limited to, entering the solid waste management facility to assess the problem; issuing or modifying orders directing that certain actions be taken to prevent or eliminate the problem; commencing an action to enjoin the practice that is causing the problem; and inspecting and obtaining samples from the facility.

**Section 44-96-290. Permitting.**

This section requires that a DHEC permit be obtained to operate a solid waste management facility. It also prohibits the construction, expansion, modification, or closure of a solid waste management facility except in accordance with a valid DHEC permit. This section clarifies that existing permits issued under other laws and regulations will remain valid for the life of that permit except that existing facilities must comply with closure and postclosure requirements and any other provisions made specifically to existing facilities. This section directs DHEC to promulgate regulations generally applicable to the permitting process and establishes the minimum requirements for those regulations. DHEC is required, for example, to include in its regulations financial responsibility requirements -- such as letters of credit, insurance policies, or corporate guarantees -- for all solid waste management facilities. Local governments or regions which own and operate solid waste management facilities are exempted from the DHEC regulations on financial responsibility requirements unless the Federal Government requires local governments to comply with such requirements.

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This section also contains the "demonstration of need" provision originally found in Article 1. This section prohibits the issuance of a permit for a new or expanded municipal solid waste management facility until a demonstration of need for the facility is approved by DHEC. In determining need, DHEC may only consider solid waste generated in jurisdictions subject to the provisions of a county or regional solid waste management plan pursuant to this chapter. This language effectively excludes out-of-state waste from being considered in determining the need for a facility. There is an exception to this provision for private industrial solid waste management facilities. There is also an exception which, prior to adoption of a county or regional plan, allows DHEC to consider all waste generated within this State when considering a demonstration of need.

This section also states that prior to the adoption of applicable regulations or county/regional management plans, whichever comes later, no new or expanded facility may be sited or permitted without a finding by the DHEC board that an imminent or substantial threat to the health of persons or the environment is present.

This section also contains a provision requiring any new or expanded municipal solid waste management facility to comply with local zoning and land use ordinances, if any; that it be consistent with the local or regional solid waste management plan and with the State plan; and that the local jurisdiction and the jurisdiction generating the waste demonstrate to DHEC that they have a strategy in place for meeting the State solid waste reduction goal established in this chapter. This provision will also have the effect of limiting out-of-state waste because other states will not have in place waste reduction strategies designed to meet South Carolina's statutory goal. There is an exception to this provision for private industrial solid waste management facilities.

### **Section 44-96-300. Disclosure Statements by Permit Applicants.**

This section authorizes DHEC to obtain, at the time an application is filed, disclosure statements from permit applicants regarding their past operating history and environmental compliance history. Local governments or regions owning and operating solid waste management facilities are exempt from the requirements of this section. An applicant could be required to file, among other things, a description of its experience and credentials, including present and past licenses held within the last 5 years; a listing and explanation of any final convictions within the past 5 years of any crimes of moral turpitude punishable by a fine of \$5,000 or more or imprisonment for one year or more, or both; a listing and explanation of any final convictions within the past 5 years of any criminal or civil offense involving violations of any environmental laws punishable of a fine of \$5,000 or more or imprisonment for one year or more, or both; a listing and explanation of any instances within the past 5 years in which a permit held by the applicant was revoked by final

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judgment in state or federal court, and a listing and explanation of any instances within the past 5 years where the applicant has been held in contempt of a court order enforcing any federal or state environmental law relating to the activity for which a permit is being sought. The bill states that the burden of proof in regards to any application lies with the applicant.

All information must be filed not only for the applicant itself but for its "responsible parties," a defined term in the bill, which includes corporate officers, directors, and senior management officials of the applicant; any management employee of the applicant who has overall responsibility for operations and financial management of the facility under consideration; individuals or entities under contract to the applicant; and any individual or entity that holds at least 5% equity or debt interest in the applicant. If a "responsible party" is a chartered lending institution or a publicly traded corporation reporting under the Securities and Exchange Act of 1934, it is required to file the reporting documents it files at the federal level under that Act, rather than the information required by subsection (A), except it must report the information required under (A)(6). DHEC is authorized, however, to require any information it feels is necessary to determine the fitness of the permit applicant to receive permit. This section also sets forth certain circumstances under which DHEC may deny a permit and identifies the factors which DHEC must consider in making that determination. It also requires holders of permits to annually update their disclosure statements and provides a process for a permit applicant or holder to petition DHEC for issuance or reinstatement of a permit.

### **Section 44-96-310. Research, development, and demonstration permits.**

This section authorizes DHEC to issue a research, development, and demonstration permit to any solid waste management facility which would like to utilize an innovative or experimental solid waste technology or process. This section requires that the permit application demonstrate adequate protection for human health and safety and the environment. It also specifies other minimum requirements for a permit issued under this section.

DHEC is directed to promulgate, not later than 18 months after date of enactment of this legislation, the criteria and procedures for the issuance of such permits.

### **Section 44-96-320. Solid waste landfills.**

This section directs DHEC to promulgate, not later than 18 months after date of enactment of this legislation, regulations governing the siting, design, construction, operation, closure and postclosure activities of all

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solid waste landfills in this State, DHEC is further authorized to exempt any landfill from all or part of the requirements of this section. This section also specifically exempts landfills used for the disposal of solid waste from any single family or household or property where the waste is generated. This section establishes the minimum requirements which must be included in DHEC regulations for solid waste landfills.

**Section 44-96-330. Minimum requirements for new and existing municipal solid waste landfills.**

This section establishes certain minimum requirements that will apply only to municipal solid waste landfills. A municipal solid waste landfill is defined in Article 1 as a landfill, publicly or privately owned, that receives household waste, although the landfill may receive other types of solid waste such as commercial or industrial solid waste. The requirements of this section thus do not apply to landfills, either on-site or off-site, which receive only industrial solid waste. This section establishes certain minimum requirements for new and existing municipal solid waste landfills such as controls to prevent the disposal of hazardous or liquid wastes, daily cover requirements, landfill gas monitoring and control requirements, access controls, run-on and run-off controls, landfill closure and postclosure requirements, financial responsibility requirements, groundwater monitoring, and corrective action requirements. It further directs DHEC to include in its requirements for new landfills and lateral expansions of existing landfills the following: a single composite liner, leachate collection and removal systems, a construction quality assurance plan, and minimum locational requirements. The requirements of this section are consistent with the proposed EPA Subtitle D regulations for municipal solid waste landfills which should take effect this year.

**Section 44-96-340. Solid waste incinerators.**

This section directs DHEC to promulgate, not later than 18 months after date of enactment of this legislation, regulations governing the siting, design, construction, operation, closure, and postclosure activities of all solid waste incinerators in this State. It further authorizes DHEC to exempt any incinerator from all or part of the requirements of this section. This section established the minimum provisions which DHEC regulations on solid waste incinerators must contain.

**Section 44-96-350. Minimum requirements for the management of municipal solid waste incinerator ash.**

This section established certain minimum requirements for the management of ash from municipal solid waste incinerators. It does not apply to ash

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from incinerators which handle only industrial solid waste. This section requires that ash from a municipal solid waste incinerator be disposed of in a monofill with either a single composite liner or a double geomembrane liner or in a unit which may be used for codisposal which has a double geomembrane liner. This section also requires DHEC to prescribe, not later than 18 months after the date of enactment of this legislation, criteria and procedures for testing municipal solid waste incinerator ash. If the ash does not meet DHEC criteria, DHEC may require that it be disposed of in a facility meeting the requirements for hazardous waste disposal.

### **Section 44-96-360. Solid waste processing facilities.**

This section requires DHEC to promulgate, not later than 18 months after date of enactment of this legislation, regulations governing the siting, construction, operation, closure, and postclosure activities of all facilities which receive solid waste for processing. This section also authorizes DHEC to exempt any processing facility from all or a part of the requirements of this section. All new processing facilities must comply with the requirements of this section. DHEC is directed to establish a schedule of compliance for existing facilities. This section further established the minimum requirements which the DHEC regulations must contain.

### **Section 44-96-370. Storage and transfer of solid waste.**

This section requires DHEC to promulgate, not later than 18 months after the date of enactment of this legislation, regulations establishing minimum standards for the storage and transportation of solid waste. This section also authorizes DHEC to exempt such facilities from all or part of the requirements of this section.

### **Section 44-96-380. Land application facilities; composting facilities; construction, demolition and land clearing debris landfills.**

This section requires DHEC to promulgate, not later than 18 months after date of enactment, regulations establishing minimum standards for land application facilities, composting facilities, and construction and demolition debris landfills. DHEC is authorized to exempt facilities from all or part of the requirements of this section. There is a specific exemption for landfills for the disposal of trees, stumps, wood chips, and yard waste when the generation and disposal of such wastes occur on properties under the same management or control.

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### **Section 44-96-390. Approval procedures for special wastes.**

This section establishes an approval procedure for "special wastes." Special wastes are defined for the purposes of this section as wastes that are either difficult or dangerous to handle and require unusual management and specifically includes the waste streams listed in this section. This section prohibits the disposal or the acceptance for disposal of special wastes at a municipal solid waste landfill without prior written approval by the disposal facility and in accordance with DHEC procedures. This section

requires the owner or operator of the disposal facility, not later than 6 months after date of enactment of this legislation or initial receipt of waste, whichever is later, to prepare and submit to DHEC a plan for testing and sampling special wastes. DHEC must approve the plan within 90 days of the date of its receipt. This section does not authorize a facility to accept waste which, under current regulations, may not be sent to a nonhazardous Subtitle D facility.

### **Section 44-96-400. Information requirements by the department; disclosure of information obtained by the department.**

This section authorizes DHEC to require solid waste management facilities to keep certain records, make reports, take samples, install and use monitoring equipment, or provide such other information as may be necessary to carry out the purposes of this Article. This section also provides for the protection of proprietary information.

### **Section 44-96-410. Inspections; samples.**

This section authorizes DHEC representatives, upon presentation of appropriate credentials, at a reasonable time, to enter any solid waste management facility to inspect and copy reports, records, or test results necessary to carry out its responsibilities under this section; and to inspect and obtain samples from the owner, operator, or agent in charge of the solid waste management facility.

### **Section 44-96-420. Modifications or revocation of orders to prevent violations of this Article.**

This section authorizes DHEC to issue, modify, or revoke any order to prevent a violation of this Article.



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### **Section 44-96-430. Hearings.**

This section authorizes DHEC to hold public hearings, conduct studies and investigations, and issue, deny, revoke, suspend, or modify permits under such conditions as it may prescribe for the operation of solid waste management facilities. This section further provides that no permit shall be revoked without the opportunity for a hearing.

### **Section 44-96-440. Unlawful acts.**

This section makes it unlawful to manage solid waste without reporting such activities to DHEC, to manage solid waste without complying with the standards and procedures set forth in DHEC regulations, and to fail to comply with this Article, any permit, or any DHEC order.

### **Section 44-96-450. Violations; penalties.**

This section sets forth the means by which DHEC may enforce permit conditions, regulations, standards, or other requirements. Available enforcement mechanisms include the imposition of civil action by DHEC for injunctive relief or the bringing of a civil or criminal action by the Attorney General. Criminal penalties include fines up to \$10,000 per day of violation or imprisonment for not more than one year, or both. For a second or subsequent offense, these penalties increase to fines of up to \$25,000 per day of violation or imprisonment not to exceed 2 years, or both. Local governments, including its officials and employees, owning and operating solid waste management facilities are exempt from criminal penalties, including either imprisonment or criminal fines. Local governments will remain subject to civil penalties.

### **Section 44-96-460. Training of operators of solid waste management facilities.**

This section directs DHEC to establish training programs for operators of landfills and other solid waste management facilities and for coordinators of local recycling programs. This section also provides that 2 years after date of enactment of this legislation, no person may perform the duties of an operator without having completed a DHEC-approved training course and the owner of a solid waste management facility may not employ a person to perform the duties of an operator unless that person has completed an approved training course.

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### Section 44-96-470. Facility Issues Negotiation Process.

This section provides additional protections to the citizens of a community in which a municipal solid waste disposal facility may be located to ensure their participation in the decision-making process at as early a stage as possible. This section establishes a process by which a group of concerned citizens may establish a committee to negotiate with an entity seeking a permit for a municipal solid waste disposal facility, whether the permit applicant is a local government or a private entity, on issues such as hours of operation, recycling efforts, protection of property values, traffic routing and road maintenance, and establishment of local advisory committees. Permit conditions may not be negotiated and will remain with DHEC's regulatory jurisdiction to determine. This section establishes certain notification requirements when a permit application is filed with DHEC and a procedure by which concerned citizens may petition the host local government to initiate a "facility issues negotiation process." The petitioning citizens may select up to 10 citizens to represent them in the negotiation process with the permit applicant. The negotiations will be overseen by a facilitator named by the host local government, after consultation with the citizens committee, from a list provided by DHEC. If consensus is reached, the results shall be certified by resolution of the host local government. If consensus is not reached, the permit applicant may still proceed to seek a permit from DHEC.

SECTION 4. This section establishes a 50% tax credit, or \$100,000, whichever is less, against corporate income tax for qualified recycling equipment and provides for the implementation of the tax credit by the Tax Commission. The Tax Commission must establish a precertification procedure so that equipment can be certified as qualifying prior to placing it into service or modifying any equipment. It also provides for a method of recapture if the property ceases to be qualified.

SECTION 5. This section amends Section 16-11-700 to provide increased penalties for littering in large amounts or for commercial purposes.

SECTION 6. This section states that all rules, regulations, standards, orders or other actions by the Department remain in effect until specifically changed or voided by the Department or by statute.

SECTION 7. Local government financing. This Section states that local governments or regions may avail themselves to any methods of financing provided by law to meet its present and future solid waste disposal needs.

SECTION 8. This section requires the Public Service Commission and the Joint Legislative Committee on Energy to review alternatives which will encourage the development of solid waste management facilities that use solid waste as fuel for the production of electricity.

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**SECTION 9.** Analysis lines following each code section in the bill are for informational purposes only and are not part of the Code itself.

**SECTION 10.** This section provides that the legislation will take effect upon approval by the Governor, except Section 12-7-1255 in Section 4 is effective for taxable years on or after Jan. 1, 1991. However, the credit cannot be claimed until tax returns are filed for tax year beginning in 1992.